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09500SB2725ham001

LRB095 05934 AJ0 53680 a

1 AMENDMENT TO SENATE BILL 2725

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2725 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by  
5 changing Section 15-1106 as follows:

6 (735 ILCS 5/15-1106) (from Ch. 110, par. 15-1106)

7 Sec. 15-1106. Applicability of Article. (a) Exclusive  
8 Procedure. From and after the effective date of this amendatory  
9 Act of 1986, the following shall be foreclosed in a foreclosure  
10 pursuant to this Article:

11 (1) any mortgage created prior to, on or after the  
12 effective date of this amendatory Act of 1986;

13 (2) any real estate installment contract for residential  
14 real estate entered into on or after the effective date of this  
15 amendatory Act of 1986 and under which (i) the purchase price  
16 is to be paid in installments over a period in excess of five

1 years and (ii) the amount unpaid under the terms of the  
2 contract at the time of the filing of the foreclosure  
3 complaint, including principal and due and unpaid interest, at  
4 the rate prior to default, is less than 80% of the original  
5 purchase price of the real estate as stated in the contract;

6 (3) any collateral assignment of beneficial interest made  
7 on or after the effective date of this amendatory Act of 1986  
8 (i) which is made with respect to a land trust which was  
9 created contemporaneously with the collateral assignment of  
10 beneficial interest, (ii) which is made pursuant to a  
11 requirement of the holder of the obligation to secure the  
12 payment of money or performance of other obligations and (iii)  
13 as to which the security agreement or other writing creating  
14 the collateral assignment permits the real estate which is the  
15 subject of the land trust to be sold to satisfy the  
16 obligations.

17 (b) Uniform Commercial Code. A secured party, as defined in  
18 Article 9 of the Uniform Commercial Code, may at its election  
19 enforce its security interest in a foreclosure under this  
20 Article if its security interest was created on or after the  
21 effective date of this amendatory Act of 1986 and is created by  
22 (i) a collateral assignment of beneficial interest in a land  
23 trust or (ii) an assignment for security of a buyer's interest  
24 in a real estate installment contract. Such election shall be  
25 made by filing a complaint stating that it is brought under  
26 this Article, in which event the provisions of this Article

1 shall be exclusive in such foreclosure.

2 (c) Real Estate Installment Contracts. A contract seller  
3 may at its election enforce in a foreclosure under this Article  
4 any real estate installment contract entered into on or after  
5 the effective date of this Amendatory Act of 1986 and not  
6 required to be foreclosed under this Article. Such election  
7 shall be made by filing a complaint stating that it is brought  
8 under this Article, in which event the provisions of this  
9 Article shall be exclusive in such foreclosure. A contract  
10 seller must enforce its contract under this Article if the real  
11 estate installment contract is one described in paragraph (2)  
12 of subsection (a) of Section 15-1106.

13 (d) Effect of Election. An election made pursuant to  
14 subsection (b) or (c) of Section 15-1106 shall be binding only  
15 in the foreclosure and shall be void if the foreclosure is  
16 terminated prior to entry of judgment.

17 (e) Supplementary General Principles of Law. General  
18 principles of law and equity, such as those relating to  
19 capacity to contract, principal and agent, marshalling of  
20 assets, priority, subrogation, estoppel, fraud,  
21 misrepresentations, duress, collusion, mistake, bankruptcy or  
22 other validating or invalidating cause, supplement this  
23 Article unless displaced by a particular provision of it.  
24 Section 9-110 of the Code of Civil Procedure shall not be  
25 applicable to any real estate installment contract which is  
26 foreclosed under this Article.

1 (f) Pending Actions. A complaint to foreclose a mortgage  
2 filed before July 1, 1987, and all proceedings and third party  
3 actions in connection therewith, shall be adjudicated pursuant  
4 to the Illinois statutes and applicable law in effect  
5 immediately prior to July 1, 1987. Such statutes shall remain  
6 in effect with respect to such complaint, proceedings and third  
7 party actions notwithstanding the amendment or repeal of such  
8 statutes on or after July 1, 1987.

9 (g) A complaint to foreclose a mortgage may not be filed  
10 from the effective date of this amendatory Act of the 95th  
11 General Assembly through the 90th day after the effective date  
12 of this amendatory Act of the 95th General Assembly if the  
13 subject real estate is residential real estate that is the  
14 primary residence of the mortgagor. Any pending mortgage  
15 foreclosure action in an Illinois state court is stayed,  
16 whether at the pre-judgment, judgment, or post-judgment stage,  
17 from the effective date of this amendatory Act of the 95th  
18 General Assembly through the 90th day after the effective date  
19 of this amendatory Act of the 95th General Assembly if the  
20 subject real estate is residential real estate that is the  
21 primary residence of the mortgagor. This stay shall include,  
22 but not be limited to, any judicial sale or other sale of the  
23 subject real estate; report of sale or confirmation of sale of  
24 the subject real estate; transfer or acquisition of title to  
25 the subject real estate; taking of possession of the subject  
26 real estate by the mortgagee; and proceedings against any

1 occupant under Article IX of this Code, eviction of the current  
2 occupants of the subject real estate, or any other attempt to  
3 deny possession to the current occupants of the subject real  
4 estate. Nothing in this subsection (g) shall affect the  
5 mortgagor's right of redemption or reinstatement. Nothing in  
6 this subsection (g) shall affect any of the mortgagor's  
7 obligations under any mortgage instrument relating to the  
8 subject real estate. Nothing in this subsection (g) shall  
9 affect the ability of a mortgagee to dismiss a complaint for  
10 foreclosure.

11 (Source: P.A. 85-907.)

12 Section 99. Effective date. This Act takes effect upon  
13 becoming law."